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**C-SPAN**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Bruce Collins

Vice President and General Counsel

June 2, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: C-SPAN's Petition for Reconsideration in MM Docket  
92-266

Dear Ms. Searcy:

Enclosed are one original and 11 copies of National Cable  
Satellite Corporation's (d/b/a C-SPAN) petition for  
reconsideration in the above-referenced docket as required by  
Sec. 1.429 of the Commission's rules.

If you have any question about this petition please contact  
me at (202) 626-7950.

Sincerely,



Enclosures

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20544

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In the Matter of

Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992

Rate Regulation

To: The Commission

MM Docket 92-266

PETITION FOR RECONSIDERATION

Introduction

C-SPAN and C-SPAN 2 are full-time satellite delivered public

### Background

In its Report and Order in the above-referenced proceeding (the "Order"), the Commission decided to allow cable operators to pass through to subscribers increases in programming costs to the extent that those costs exceed inflation.<sup>1</sup>

The Commission also made what it called "one important exception" to the pass-through -- an express limitation on the pass-throughs permitted for programming services affiliated with cable MSOs. The Order cited the record that Congress established in examining the sales and business practices of such affiliated cable services as justifying the limit on the pass-through. The Commission's concern was of the "abuses that might occur" if such vertically integrated cable operators were allowed to engage in unlimited pass-throughs of programming cost increases to their subscribers.<sup>2</sup> Apparently, the fear was that programming services in which cable operators had an attributable interest would be less constrained from increasing their service fees if

The Commission also decided that this "one important exception" to the programming cost pass-through would apply only to the programming services that qualified as affiliated programmers under the program access proceeding.<sup>3</sup> For program access purposes, NCSC acknowledges that it is properly classified as an affiliated programmer.

#### Discussion

NCSC respectfully points out that C-SPAN and C-SPAN 2 have fallen through a crack in this Order. The Commission's decision to use the program access definition of affiliated programmer to screen out cable programmers that might abuse the pass-through of

its affiliates will be forced to absorb the amount of any fee increase that exceeds the level of inflation. As a practical matter, the Commission's rule means that NCSC will not be able to raise its affiliation fee in the foreseeable future.<sup>5</sup> Given the leeway the rules offer other cable programmers to increase affiliation fees, the detrimental effect on NCSC could not have been the intent of Congress or the Commission. The rules in this case address a problem that simply does not exist with respect to C-SPAN and C-SPAN 2.

As a non-stock, non-profit corporation with tax-exempt status,<sup>6</sup> it is both impossible and illegal for NCSC to "abuse" the pass-through of costs in the fashion feared by Congress and the Commission. As a non-stock entity, NCSC can not be said to have private owners who might benefit from an increase in value of their ownership share of the corporation as a result of an increase in the fees NCSC would charge cable operators. Without shares of stock NCSC lacks the method of transferring ownership and value even it wanted to do so. As a non-profit corporation, NCSC is prohibited by state law from transferring any part of its

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<sup>5</sup> If NCSC attempts to increase its fee by only 1 cent, that still represents a 25% increase in the basic rate of 4 cents. Even if the inflation rate is as high as 5%, the cable operator would still be unable to pass through the bulk of the increase to subscribers.

<sup>6</sup> NCSC is organized as a non-profit corporation under District of Columbia law, and is exempt from the payment of federal taxes pursuant to I.R.C. Sec. 501(c)(3).

income to its members, directors or officers.' As a tax-exempt organization NCSC risks losing that beneficial status if its operations result in private inurement or private benefit to any person.

Moreover, the record established by Congress is silent on the matter of non-stock, non-profit cable programmers. In fairness to Congress it should be noted that to the best of NCSC's, knowledge C-SPAN and C-SPAN 2 are the only non-stock, non-profit cable programming services operating on a nationwide

NCSC-specific because the future will almost certainly see the